

REMARKS

This Amendment is responsive to the Final Office Action dated September 26, 2006. All objections and rejections of the Examiner are respectfully traversed. Reconsideration and further examination are respectfully requested.

Amendments to the claims herein are supported at various places within the Specification and Claims as originally filed. For example, support for the amendments herein may be found in lines 8-11 on page 19, and on lines 20-23 on page 20 of the Specification as originally filed.

At paragraph 2 of the Office Action, the Examiner rejected claims 1, 12 and 23 for being non-statutory subject matter under 35 U.S.C. 101. Applicants respectfully traverse this rejection.

While paragraph 3 of the Office Action incorrectly indicates claim 11, the Examiner previously clarified in a telephone interview that independent claim 12 was the intended claim in this rejection. Accordingly, the following remarks address independent claims 1, 12 and 23.

In the Examiner's Response to Arguments, at paragraph 35 of the Final Office Action, the Examiner stated:

"Monitoring a network by using these statistical values has not been indicated. Therefore, these statistical values are non statutory entities. . . "

In order to address the Examiner's rejection, the independent claims 1, 12 and 23 have been amended herein to indicate that the network is monitored by using the byte count and the packet count included in the statistical values. Accordingly, the amendments herein are

respectfully believed to overcome the Examiner's rejections under 35 U.S.C. 101, and reconsideration is respectfully requested.

In paragraphs 3-30 of the Office Action, the Examiner again rejected claims 1-9, 11-20, 22-31, and 33-39 for anticipation under 35 USC 102(b), citing United States patent 5,231,593 ("Notess"). Applicants respectfully traverse this rejection.

A shared memory of Notess contains a counter for the total number of packets transmitted across the LAN, and also a counter for the total number of bytes from all the packets. The Notess collector process may maintain separate counters for packets having lengths within certain ranges.

Nowhere in Notess is there disclosed or suggested any method or system for monitoring a network, including:

...
determining a third statistical value based on at least one of a content of the at least one data packet, the first statistical value, and the second statistical value, wherein the third statistical value includes a new value of the packet count and a new value of the byte count, *wherein the determining the third statistical value includes undoing a previous statistic add by adding a negative value to the byte count and decrementing the packet count in response to the adding of the negative value to the byte count;*
(bold italic)

...

As in the present independent claim 1. Independent claims 12 and 23 recite analogous features. Nothing in Notess provides any hint or suggestion of even the desirability of undoing a previous statistic add by adding a negative value to a byte count, and/or decrementing a packet count in response to the adding of the negative value to the byte count. In contrast, Notess discloses sending an error indicator back to an archiver process in the event that a new memory

area is determined to be not valid during a process in which statistics are copied from a shared memory. See column 6, lines 18-47 of Notess.

For the above reasons, Applicants respectfully urge that Notess does not disclose or suggest all the features of the present independent claims 1, 12 and 23. Notess therefore does not anticipate the present independent claims 1, 12 and 23 under 35 U.S.C. 102. As claims 2-7, 9, 13-18, 20, 24-29, 31, and 34-39 each depend either directly or indirectly from claims 1, 12, and 23, they are respectfully believed to be patentable over Notess for at least the same reasons. Claims 8, 11, 19, 22, 30 and 33 have been cancelled herein.

In paragraphs 31-32 of the Office Action, the Examiner again rejected claims 10, 21 and 32 as being obvious under 35 U.S.C. 103, citing Notess in combination with United States patent number 4,817,080 of Soha ("Soha"). Applicants respectfully traverse this rejection.

Nowhere in the combination of Notess and Soha is there disclosed or suggested any method or system for monitoring a network, including:

...

determining a third statistical value based on at least one of a content of the at least one data packet, the first statistical value, and the second statistical value, wherein the third statistical value includes a new value of the packet count and a new value of the byte count, *wherein the determining the third statistical value includes undoing a previous statistic add by adding a negative value to the byte count and decrementing the packet count in response to the adding of the negative value to the byte count;* (bold italic)

...

As in the present independent claims 1, 12 and 23. Like Notess, Soha provides no hint or suggestion of even the desirability of undoing a previous statistic add by adding a negative value to a byte count, and/or decrementing a packet count in response to the adding of the

negative value to the byte count. Moreover, neither Notess nor Soha include any teaching regarding undoing a previous statistical add.

For the above reasons, Applicants respectfully urge that the combination of Notess and Soha fails to disclose or suggest all the features of the present independent claims 1, 12 and 23, from which claims 10, 21 and 32 depend. Accordingly, the combination of Notess and Soha does not support a *prima facie* case of obviousness with regard to the present independent claims 1, 12 and 23 under 35 U.S.C. 103. As to claims 10, 21 and 32, they each depend either directly or indirectly from independent claims 1, 12 and 23, and are respectfully believed to be patentable over the combination of Notess and Soha for at least the same reasons. Reconsideration of all pending claims is respectfully requested.

In view of the above, Applicants respectfully urge that the presently pending claims are allowable, and respectfully request that all rejections be withdrawn.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone David A. Dagg, Applicants' Attorney at 617-630-1131 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

November 22, 2006
Date

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Docket No. 120-099